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73-1210

In the
**Supreme Court
of the United States**

October Term, 1973

INTERSTATE COMMERCE COMMISSION,

Appellant,

v.

**OREGON PACIFIC INDUSTRIES, INC.; ARTHUR A.
POZZI CO.; TIMBERLAND LUMBER CO.; CHAPMAN
LUMBER CO.; NORTH PACIFIC LUMBER CO.; and
AMERICAN INTERNATIONAL LUMBER CO.,**

Appellees.

On Appeal from the United States District Court
for the District of Oregon

**MOTION OF WESTERN RAILROAD TRAFFIC
ASSOCIATION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE**

May 10, 1974

JAMES H. CLARKE

800 Pacific Building
520 SW Yamhill Street
Portland, Oregon 97204
Counsel for Western Railroad Traffic
Association; *amicus curiae*

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**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

Pursuant to Rule 42(3) of the rules of the Court,
the following western railroads comprising the Western
Railroad Traffic Association:

The Atchison, Topeka and Santa Fe Railway
Company

Burlington Northern

Chicago & Eastern Illinois Railroad

Chicago & North Western Transportation Company

Chicago, Milwaukee, St. Paul and Pacific R.R.

Chicago, Rock Island and Pacific Railroad Company

The Denver and Rio Grande Western Railroad
Company

Elgin, Joliet and Eastern Railway Company

Green Bay and Western Railroad Company

Illinois Central Gulf Railroad

Illinois Terminal Railroad Co.

The Kansas City Southern Railway Co.

Missouri-Kansas-Texas Railroad Co.
 Missouri-Pacific Railroad Co.
 Norfolk and Western Railway Co.
 St. Louis-San Francisco Railway Co.
 St. Louis Southwestern Railway Company
 Soo Line Railroad
 Southern Pacific Transportation Company
 The Texas & Pacific Railway Company
 Toledo, Peoria & Western Railroad Company
 Union Pacific Railroad
 The Western Pacific Railroad Company
 The American Short Line Railroad Association

respectfully move for leave to appear as *amicus curiae* and to file a brief urging reversal. The Commission has granted its consent, but appellees refuse to do so. On April 29, 1974 *amicus curiae* was permitted to file a brief urging the Court to note probable jurisdiction.

1. Railroad members of Western Railroad Traffic Association carry most of the lumber and wood products which are shipped annually from western mills to consumers in other parts of the country, and they depend upon the efficient utilization of boxcars and other freight cars suitable for such traffic.

The record shows that a severe shortage of freight cars exists in the wood products industry, which is substantially contributed to by shippers who immobilize freight cars by using them as warehouses at hold points. The Commission's emergency car service order under § 1(15) of the Interstate Commerce Act (49

USC § 1(15) reduced such practices, and the western lines are severely and adversely affected by the District Court's decision setting it aside.

2. The question in this case is whether Section 1(15) authorizes the Commission to remedy a critical freight car shortage by temporarily suspending a practice of carriers that allows shippers to use freight cars as warehouses at hold points under through rates. The District Court held that it does not, because such an order is not a "car service order" under the Esch Car Service Act, but is a "rate order" which affects published tariffs and charges paid by shippers. If the District Court's decision is correct, relief from the emergency, if any is available under present law, must follow extensive rate-making proceedings under Section 15 of the Act (49 USC § 15), which will leave the emergency unresolved for an indefinite period and cause substantial injury to the public and to the western lines.

While the Commission seeks to sustain its order, it does not represent railroad members of Western Railroad Traffic Association which are directly affected by it and by the District Court's decree and have an important economic interest in an adequate supply of freight cars. Furthermore, the sufficiency of the Commission's rate-making procedures as applied to such cases is involved, and the views of those who are sub-

ject to them should be heard as well as the views of the agency itself.

For the foregoing reasons, *amicus curiae* asks leave to file a brief seeking reversal of the decree of the District Court.

Respectfully submitted,

JAMES H. CLARKE,

Counsel for Western Railroad Traffic
Association, *amicus curiae*

May 10, 1974

Oglesby H. Young
Mark S. Dodson
Of Counsel

